

our Constitution, the constitutional rule is clear: Congress instructs the President by law what to do, and the President faithfully executes those laws.

But what happens if Congress will not instruct clearly? What happens under our Constitution when faithfully executing one law Congress has passed requires the President to fail to faithfully execute another law? How can the President faithfully execute irreconcilably conflicting instructions from Congress?

As a matter of constitutional principle, there is only one logical resolution I can see to this constitutional predicament which Congress has created.

When the matter is sufficiently grave to merit the President's attention, and when Congress sends irreconcilable messages for the President to faithfully execute, a zone of executive discretion must necessarily open to allow the President to make the best decisions for the American people in the area where Congress has sent those irreconcilable mixed signals.

Of course, the instant Congress resolves its conflicting signals, stops speaking out of both sides of its mouth, and sends a clear direction, that zone of executive discretion disappears. Congress has the power. Congress makes the laws. Congress controls the purse. Whatever fiscal path Congress instructs the President to embark on, he must faithfully execute that instruction from Congress.

But Congress can't put the President in the untenable position of having to fail in the "faithful execution" of one set of laws in order to "faithfully execute" another. That is exactly where it seems to me we would put the President if we failed to lift the debt ceiling.

The damage to the country from such failure would be profound. At least 40 cents of every Federal dollar would suddenly stop flowing into the economy. Considering what would have to be done with the remaining 60 cents, it is not very likely that the Federal regulatory process would keep running. That means every job in the country, depending on a Federal permit or Federal approval or a Federal grant or a Federal contract, would likely grind to a halt.

There would be a jump in interest rates that would hit Federal, State, municipal, corporate, and family budgets. A lot of other stuff might also go wrong, but those three are a bare minimum, and they alone would constitute a brutal shock to our struggling economy. The damage would be grave.

Bad enough if Congress instructed the President to do this kind of damage, but do we really expect him to do that sort of damage without our clear instruction? The scale of this damage lights up in sharp contrast to the constitutional predicament Congress would create through Congress's failure and inaction to send clear direction.

The 14th amendment provision, that the public debt of the United States of America "shall not be questioned," may or may not be controlling here. That specific amendment is not my point. My point is a more basic one: How, under our separated powers, when Congress gives conflicting directives, does the President "faithfully execute" those conflicting directives? The conflicting directives problem is ultimately a problem for Congress to solve. But until Congress sorts itself out and gives a clear directive, all that can be constitutionally expected of the President is to do the best he can for the country. He cannot "faithfully execute" conflicting directives.

In a sense, conflicting directives by Congress are a form of abdication by Congress—an abdication of the duty imposed on Congress by article I of the Constitution to make and pass laws. It is only reasonable and proper to infer that the constitutional duty of Congress to make and pass laws implies that the Congress will make and pass laws that are capable of faithful execution by the executive.

A Congress that cannot meet that standard is in no position to complain that the executive branch has usurped its authority. More to the point, the constitutional cure is always right in Congress's hands: Sort out your differences; give the executive branch the direction it is Congress's duty to provide.

To me, at least, this is a reading of the separation of powers in the U.S. Constitution that makes sense, that is consistent with the underlying principles of that great document, that is practical and workable, and that allows for governance rather than paralysis in circumstances when congressional dysfunction deprives the President of the clear legislative direction that by clear implication is Congress's duty to provide.

I hope before we pitch over the looming fiscal precipice, the executive branch gives these views thoughtful consideration.

I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that pursuant to the order of July 21, 2011, and after having notified the Republican leader, we proceed, at 2 p.m. today, to executive session for the consideration of Calendar No. 276, Robert S. Mueller III, of California, to be Director of the Federal Bureau of Investigation. It is my understanding this debate is to take 2 hours; is that true?

The PRESIDING OFFICER. Under the order of July 21, the Senator is correct.

Without objection, the majority leader has the authority under that order.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

THE DEBT LIMIT

Mr. TOOMEY. Mr. President, I will address the issue of the pending debt limit.

Although the President's most recent speech on this did not give me great cause for confidence, I still hope he will drop his insistence on the huge tax increase in return for making the meaningful spending cuts and reforms that we need. I hope, most of all, he will drop his opposition to putting our budget on a path to balance.

That is the big item I think we need in this debate. I think we ought to be willing to raise the debt limit, as I am, if in return for that we would have a commitment of the President to put us on a path to a balanced budget, as President Clinton committed to and he achieved with a Republican Congress back in 1995. I hope we will reach an agreement that solves the underlying problem prior to August 2.

I am here this afternoon because I think we all have to acknowledge that we are late in the process, and I think it is indisputable that there is at least a possibility that August 2 will arrive without having raised the debt ceiling, whatever our personal preferences might be about that.

In my view, since that is a possibility, it is essential that the Federal Government have a plan for what we will do if those circumstances arise. Specifically, what is going to have to happen is the government will have to spend some period of time—probably a very brief time, but a period of time nevertheless—operating exclusively on the ongoing tax revenues that will be coming in without the ability to go out and borrow additional money. That means necessarily that somebody is going to make decisions about prioritizing payments, by some criteria that somebody will come up with.

Rather than simply wait and stumble into this period and discover what somebody has come up with, I think we ought to lay out a plan. So that is what my recently introduced legislation is meant to do.

Some of us have made this argument for a long time. We saw this day coming, and we have known that we would face a difficult time raising this debt ceiling. It has always been possible that we would not do it by August 2. I have been arguing that we ought to have this plan.

Unfortunately, the administration has persisted in denying that it is even possible to prioritize. It is ridiculous. It is going to happen. They are predicting that we are going to default on our bonds if we go past August 2 without having raised the debt ceiling.

In a letter to Congress, Treasury Secretary Geithner said:

This would be an unprecedented event in American history. A default would inflict catastrophic, far-reaching damage on our Nation's economy.

President Obama said this in May of this year:

If investors around the world thought that the full faith and credit of the United States

was not being backed up, if they thought that we might renege on our IOUs, it could unravel the entire financial system.

These are scare tactics. These things need not happen. I am afraid they are meant to intimidate Members of Congress into voting for a debt limit increase without the underlying reforms and spending cuts that the President resists. I think it's irresponsible to make these suggestions because it is entirely within the power of the administration to avoid a catastrophic default even if the debt limit is not raised.

Now we have published reports that Treasury officials are making private phone calls to senior executives at big banks informing them that the Treasury will not allow a default—will choose not to default on our bonds. I think they should not default on our bonds, but it is all well and good to tell the big banks this. How about ordinary Americans who wonder: What about our savings, and what about Social Security payments?

This is unacceptable. That is why we introduced a bill called Ensuring the Full Faith and Credit of the United States and Protecting America's Soldiers and Seniors Act. We have over 35 cosponsors.

Our bill would instruct the Treasury Secretary that in the event, however unlikely, that the debt ceiling is not raised prior to August 2, they make certain obligations and priorities so they will be paid in full, on time, and without delay. Those three priorities are: interest on our debt, so we will not default and plunge our country into economic chaos; No. 2, Social Security payments because millions of senior citizens, including my parents, depend on Social Security payments. They have earned that benefit by virtue of the payments they have made. We can and must honor that obligation. Next is payroll for Active-Duty military personnel because those risking their lives for us deserve this certainty.

The fact is, there are far more than enough resources for the administration to make these payments. As this chart illustrates, the green bar reflects total minimum revenue expected to come in in August. The combination of interest on our debt, Active-Duty military pay, and Social Security benefits would add up to less than half of the revenue that we are going to take in in August alone. These are not my numbers. They come from the Bipartisan Policy Center. They illustrate clearly that we have the ability to pay these items and many others.

Let me be very clear. I am not suggesting this is a desirable outcome. I am not suggesting this bill is the substitute for raising the debt ceiling.

Mr. President, this chart illustrates that there clearly are more than enough financial resources that will be coming into the Treasury day in and day out in the form of ongoing tax revenue to easily be able to afford interest on our debt to avoid a default, Social

Security payments to seniors so that they can be assured of the income they deserve, and Active-Duty military pay, with a great deal left over.

These are not my numbers. They come independently verified by many organizations, including the Bipartisan Policy Center. This bill is not meant as a substitute for raising the debt limit. It is a mechanism for minimizing the disruption that might otherwise occur if the debt limit is not raised prior to August 2.

It is my hope that this legislation never needs to be implemented. But I believe it would be irresponsible for us to go into this period without having planned for how we will handle it in the event this happens.

I yield the floor.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CARDIN). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF ROBERT S. MUELLER, III, TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider Executive Calendar No. 276, which the clerk will report.

The bill clerk read the nomination of Robert S. Mueller, III, of California, to be Director of the Federal Bureau of Investigation for a term expiring September 4, 2013.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, before I begin, unless all time is yielded back, we have 2 hours on this debate. I ask unanimous consent that any quorum calls during that 2 hours be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, today the Senate will consider the President's nomination of Robert Mueller to continue serving as the Director of the Federal Bureau of Investigation. This is consistent with the President's May 12, 2011 request that Congress pass legislation to enable the Director to continue serving, in light of the leadership transitions at several key national security agencies.

Prior to the President's request, I had discussed this with President Obama, and one of the things he noted was that we were going to have a new Secretary of Defense, a new Director of the CIA, and that he did not want to

have yet a third key member of the national security team be replaced at this time. I applaud the President for this, as he could have taken another route and named somebody who would serve for 10 years, beyond any time the President might be in office. Instead, the President decided to do what is best for the country and extend Director Mueller for 2 years. With the tenth anniversary of 9/11 approaching and the continued threat from al-Qaida, we find ourselves facing unique circumstances. We need leadership, stability, and continuity at the FBI as the President makes necessary shifts to his national security team.

After I met with the President and heard his request, I immediately went to work with a bipartisan group of Senators to draft and introduce a bill to create a one-time exception to the statute that limits the term of the FBI Director to 10 years. I worked in a bipartisan manner to hold a hearing and report the legislation to the full Senate on June 16, 2011. We worked in such a way it could not be seen as a Democratic or Republican bill but as bipartisan. Unfortunately, it then took a month to get consent from the other side to consider the bill. Once we obtained consent, the Senate was able to pass a version of it on July 21. The House of Representatives, to their credit, followed suit on July 25 and the President signed the bill into law yesterday.

The President's nomination of Director Mueller shows there was never any effort to impose a legislative appointment upon the President. The request to extend Director Mueller's term originated with the President, not Congress. Nor was it Director Mueller's idea. The President has prevailed upon Director Mueller and his family, for the good of the country, to alter their plans for Director Mueller to leave the FBI. Instead, both Director Mueller and Mrs. Mueller have answered the call of the country. Incidentally, I don't think I am disclosing anything inappropriate by saying that in my discussions with the President, when he was talking about extending the term of Director Mueller, I asked him: How does Director Mueller feel about this? The President said: I haven't talked with him yet, but he is a good, loyal American, a good Marine, and he will answer the call. And that is precisely what he did.

When we passed our legislation, I did insist we include a unanimous consent agreement to expedite consideration of this nomination when others insisted we adopt a form of statute that would require Director Mueller's renomination. The Majority Leader now has consent to take up the nomination, and after the use or yielding back of time for debate, the Senate will vote on the nomination. Some asked why I insisted upon such a unanimous consent agreement. I did it to prevent a recurrence of the delays and obstruction that have been used to complicate consideration